## UNITED STATE DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

PLAINTIFF,

06-CV-2621 LTS (JLC)

V.

ANDREAS BADIAN, et al.,

DEFENDANTS.

## **DECLARATION OF KENNETH J. GUIDO**

KENNETH J. GUIDO hereby declares under penalty of perjury, as follows:

- 1. I am counsel for the Securities and Exchange Commission ("Commission" or "SEC") in this action.
- 2. I submit this declaration in connection with the SEC's Memorandum in Opposition to Andreas Badian's ("Badian") November 9, 2011 Motion *in Limine* ("SEC's Opposition Memorandum").
- 3. Lodged herewith are the SEC's Attachments referred to in the SEC's Opposition Memorandum.
- 4. Attachment 1 is a true and correct copy of Magistrate Judge Eaton's Memorandum and Order dated January 26, 2009.
- 5. Attachment 2 is a true and correct copy of SEC's Trial Exhibit 7, SEC 21(a) Order dated June 17, 2002, Requiring Rhino to File Sworn Statement.

- 6. Attachment 3 is a true and correct copy of excerpts from the Deposition of Robert F. Charron ("Charron") taken on June 12, 2008, in this action.
- 7. Attachment 4 is a true and correct copy of an October 20, 2008, letter from the SEC to the Court requesting judicial resolution of a discovery dispute with Charron.
- 8. Attachment 5 is a true and correct copy of an October 31, 2008, letter from the SEC to the Court responding to Badian's opposition to the SEC's letter of October 20, 2008.
- 9. Attachment 6 is a true and correct copy of excerpts from the Deposition of Therese D. Pritchard ("Ms. Pritchard") taken on August 25, 2009, in this action.
- 10. Attachment 7 is a true and correct copy of a November 4, 2009 joint letter from Badian and the SEC to the Court raising discovery dispute.
- 11. Attachment 8 is a true and correct copy of SEC Trial Exhibit 208, Ms. Pritchard's sworn answers dated November 23, 2009, to Magistrate's Order at Docket No. 123.
- 12. Attachment 9 is a true and correct copy of SEC Trial Exhibit 181, Ms. Pritchard's notes produced to SEC on August 25, 2009.
- 13. Attachment 10 is a true and correct copy of SEC Trial Exhibit 4, Rhino's May 6, 2003, Sworn 21(a) Report.
- 14. Attachment 11 is a true and correct copy of SEC Trial Exhibit 5, SEC's letter dated May 30, 2002, to Ms. Pritchard setting forth deficiencies in Rhino's May 6, 2003 Sworn Statement.
- 15. Attachment 12 is a true and correct copy of SEC Trial Exhibit 6, Ms. Pritchard's June 18, 2003 response to SEC's letter of May 30, 2003, concerning Rhino's 21(a)(1) Sworn Statement.
- 16. Attachment 13 is a true and correct copy of SEC Trial Exhibit 11, SEC's June 20, 2003, reply letter to the 6/20/03 letter from Ms. Pritchard.

- 17. Attachment 14 is a true and correct copy of SEC Trial Exhibits 47-1, Rhino's July 17, 2003, Revised 21(a) Sworn Report.
- 18. Attachment 15 is a true and correct copy of SEC Trial Exhibits 47-2, Charron's July 17, 2003, letter to SEC enclosing lists of documents he reviewed prior to signing Rhino's 21(a) Report.
- 19. Attachment 16 is a true and correct copy of SEC Trial Exhibit 182, e-mail dated September 24, 2002, from Ms. Pritchard to Thomas Badian.
- 20. Attachment 17 is a true and correct copy of SEC Trial Exhibit 183, e-mail trail dated June 25-27, 2002, between Ms. Pritchard, Thomas Badian and others.
- 21. Attachment 18 is a true and correct copy of SEC Trial Exhibit 188, draft letter dated July 5, 2002, from Ms. Pritchard to SEC (not sent).
- 22. Attachment 19 is a true and correct copy of Rhino's October 31, 2008, letter to SEC.
- 23. Attachment 20 is a true and correct copy of SEC Trial Exhibit 51-16, Badian's June 25, 2001, e-mail instructions to transfer funds.
- 24. Attachment 21 is a true and correct copy of SEC Trial Exhibit 178, June 25, 2001, wire transfer documents.
- 25. Attachment 22 is a true and correct copy of excerpts of SEC Trial Exhibit 305, JPMorganChase documents for wire transfer into Badian's N.Y. city account.
- 26. Attachment 23 is a true and correct copy of SEC Trial Exhibit 304, excerpts from Scheichet & Davis, Closing File for Badian's Manhattan residence.
- 27. Attachment 24 is a true and correct copy of SEC Trial Exhibit 306, JPMORGANCHASE wire transfer documents for transfers to purchase Badian's Manhattan residence.

28. Attachment 25 is a true and correct copy of SEC Trial Exhibit 120, Stipulation of Andreas Badian.

Pursuant to 28 U.S. C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: Washington, DC. November 28, 2011

/s/ Kenneth J. Guido Kenneth J. Guido